

May 17, 2016

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

LAO
75
YEARS OF
SERVICE

Death Penalty. Procedures. Initiative Statute.

Presented to:

Assembly Public Safety Committee

Hon. Reginald B. Jones-Sawyer, Sr., Chair

and

Senate Public Safety Committee

Hon. Loni Hancock, Chair





LAO Role in Initiative Process



Fiscal Analysis Prior to Signature Collection

- State law requires our office to work with the Department of Finance to prepare a joint impartial fiscal analysis of each initiative before it can be circulated for signatures. State law requires that this analysis provide an estimate of the measure's fiscal impact on the state and local governments.
- The fiscal analysis must be submitted to the Attorney General within 50 calendar days from the initiative's submission date. A summary of the estimated fiscal impact is included on petitions that are circulated for signatures.



Analyses After Measure Receives Sufficient Signatures to Qualify for the Ballot

- State law requires our office to provide impartial analyses of all statewide ballot propositions for the statewide voter information guide, including a description of the measure and its fiscal effects.
- We are currently in the process of preparing these materials.

Background



Murder and the Death Penalty

- First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place at the same time as certain other crimes, such as kidnapping.
- First degree murder is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when specified “special circumstances” of the crime have been charged and proven in court.
- Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder is carried out for financial gain or more than one murder was committed.



Legal Challenges to Death Sentences

- Upon the conclusion of the murder trial, defendants who are found guilty and receive a sentence of death are entitled to a series of legal challenges.
 - **Direct Appeals.** Under existing state law, direct appeals—or arguments that violations of state law or federal constitutional law took place during the trial—are automatically appealed to the California Supreme Court. These appeals focus on the records of the court proceedings that resulted in the death sentence.
 - **Habeas Corpus Petitions.** Habeas corpus petitions—or legal challenges involving factors of the case that would not be evident in the records reviewed in the direct appeals (such as claims that the defendant’s counsel was ineffective)—are heard first in the California Supreme Court and then the federal courts.

- Legal challenges to death sentences can take more than a couple of decades to complete in California. An estimated 337 direct appeals and 263 state habeas corpus petitions were pending in the California Supreme Court as of April 2016.
- The California Supreme Court appoints attorneys, who meet qualifications established by Judicial Council, to represent individuals who have been sentenced to death but cannot afford legal representation. Different attorneys are generally appointed to direct appeals and habeas corpus petitions.
- As of April 2016, 49 inmates were waiting for attorney appointment for their direct appeals and 360 were waiting for attorney appointment in their habeas corpus petitions.



Implementation of the Death Penalty

- Since the current death penalty law was enacted in California in 1978, 930 individuals have received a death sentence. Of these, 15 have been executed, 103 have died prior to being executed, 748 are in state prison with death sentences, and 64 have had their sentences reduced by the courts.
- Condemned inmates generally cost more to house than typical inmates due to increased security requirements, such as being housed in single cells and being escorted at all times by one or two officers while outside of their cells.
- The state prisons generally use lethal injection to execute condemned inmates. In 2006, federal courts stopped executions after ruling that the state's lethal injection procedures were unconstitutional. Between 2007 and 2010, the state revised its execution regulations. However, state courts ruled that the state did not follow the Administrative Procedures Act (APA) when revising its procedures. As a result, executions cannot resume until the state develops regulations in accordance to the APA. Draft regulations were subsequently published in November 2015 and are currently undergoing public comment.



Major Provisions of Proposed Initiative



Habeas Corpus Petition Hearings

- The measure requires that habeas corpus petitions first be heard in the trial courts instead of the California Supreme Court. These petitions would generally be assigned to the judge who presided over the original murder trial. Trial courts would be required to issue a statement explaining the basis for their ruling. This decision could then be appealed to the Courts of Appeal, followed by the Supreme Court.
- Cases pending before the Supreme Court could be transferred to the trial courts.



Time Limits on Death Penalty Process

- The measure requires that the direct appeal (in the Supreme Court) and the initial habeas corpus petition (in the trial court) be completed within five years of the death sentence unless “extraordinary and compelling” reasons justify the delay.
- The measure requires that initial habeas corpus petitions be filed with the trial courts within one year of attorney appointment. The trial courts would then have no more than two years to issue its decision. If a petition is not filed within this time period, the court must dismiss the petition unless it determines that the defendant is likely either innocent or ineligible for the death sentence.
- In order to help meet these timeframes, the measure imposes various other limits. For example, the measure limits the number of additional habeas corpus petitions that may be filed.

Major Provisions of Proposed Initiative

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Appointment of Attorneys

- The measure directs the Judicial Council and California Supreme Court to reevaluate and amend the attorney qualifications for death penalty legal challenges in order to expand the number of attorneys available for appointment to ensure cases are heard in a timely manner while ensuring competent representation.
- The measure requires that certain Court of Appeal appellate attorneys be required to accept appointment to direct appeals under certain circumstances. For habeas corpus petitions, the measure shifts authority for appointing attorneys from the California Supreme Court to the trial courts.



Various Other Changes

- The measure makes various changes to Habeas Corpus Resource Center (HCRC) operations. This includes shifting oversight of HCRC to the Supreme Court upon elimination of its board and limits HCRC legal activities.
- The measure specifies that every person under a death sentence must work while in state prison and have their pay deducted if the inmate owes victim restitution, subject to state laws and regulations. Because the measure does not change current state regulations related to inmate work, existing practices would not necessarily be changed. The measure increases from 50 percent to 70 percent the amount that may be deducted from inmate wage and trust accounts if the inmate owes victim restitution.
- The measure exempts execution procedures from the APA and allows the housing of condemned inmates at any prison. The measure also makes various changes regarding the method of execution used by the state. For example, challenges to the method may only be heard in the court that imposed the death sentence and the state must generally maintain a valid method of execution.



Major Fiscal Effects of Proposed Initiative



State Courts

- This measure would likely increase court workload and require significant staffing increases to address the hundreds of pending cases within the time limits required by the measure. The measure would also likely require a significant increase in the number of attorneys appointed to represent condemned individuals. This could require the recruitment and training of qualified attorneys.
- These costs are subject to considerable uncertainty and would depend on how this measure was interpreted and implemented. For example, the courts might determine that more than one attorney should be appointed to meet the measure's required timeframes.
- In total, the extent of the increase in state costs in the near term is unknown and would depend on how the courts addressed the increased workload, but could potentially be in the tens of millions of dollars annually in the near term.
- The fiscal impact of the measure in the longer run is less certain. On the one hand, to the extent the measure resulted in a reduction in the number of cases currently pending and the amount of time each case takes, the measure would eventually allow the state to reduce its expenditures on post-conviction proceedings. On the other hand, the state courts would need to maintain a certain level of staffing at all times to handle death penalty cases.
- The measure could also result in a net long-term increase in the cost of post-conviction proceedings under certain circumstances. For example, the additional layers of required review for habeas corpus petitions could add to the time and cost of each case. Moreover, if the measure resulted in the state appointing different attorneys for habeas corpus petitions before the trial courts and the Court of Appeal, the cost of each case could also increase.



Major Fiscal Effects of Proposed Initiative

(Continued)



State Prisons

- The measure could result in reduced state prison costs to the extent the state changes the way it houses condemned inmates. For example, if male inmates were transferred to other prisons instead of being housed in single cells at San Quentin, it could reduce housing and supervision costs. In addition, to the extent the measure resulted in additional executions that reduced the number of condemned inmates, prison costs could be further reduced.
- In total, this reduction in state prison costs could potentially reach the tens of millions of dollars annually.